

Leonard Concrete Pipe Co., Inc. and Connecticut Laborers' Funds a/w Laborers' International Union of North America, AFL-CIO. Case 34-CA-5773

November 30, 1992

DECISION AND ORDER

**BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH**

The issue here is whether to grant the General Counsel's Motion for Summary Judgment and find that the Respondent violated Section 8(a)(5) and (1) by failing to make contractually required contributions to the Health and Welfare Fund and the Legal Services Fund.

On September 3, 1992, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) and Section 8(d) of the National Labor Relations Act by failing to make the contractually required contributions to the Health and Welfare Fund and the Legal Services Fund. The Respondent filed an answer.

On October 19, 1992, the General Counsel filed a Motion for Summary Judgment and for issuance of a Board Decision and Order. On October 21, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer, the Respondent admits that it engaged in the alleged conduct, but denies that such conduct violates the Act. We find that the factual allegations in the amended complaint are true, and that there is no dispute as to any material fact in this case. Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all times material here, the Respondent, Leonard Concrete Pipe Co., Inc., a Connecticut corporation, has been engaged in the manufacture and nonretail sale of concrete pipes. The Respondent has an office and a place of business in Hamden, Connecticut (facility) where during the 12-month period ending August 31, 1992, in the course and conduct of its business operations, it purchased and received at its facility products and goods valued in excess of \$50,000 directly from points located outside the State of Connecticut. We

find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All General Laborers, Tack Welders, Special Pipe Fabricators, Overhead Crane Operators, Mixer Operators, Fork Lift Operators, Maintenance Men, Lead Men and Working Foremen employed by the Respondent; but excluding all other employees, and all guards, professional employees and supervisors as defined in the Act.

Since about 1987 and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from March 1, 1990, to February 28, 1993. At all times since 1987, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About January 1, 1992, the Respondent unilaterally and without the consent of the Union failed to continue in full force and effect all the terms and conditions of the agreement by failing to make the contractually required contributions to the Health and Welfare Fund and the Legal Services Fund. The Respondent admits, and we find, that these subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. By these acts, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since January 1, 1992, to make the contractually required contributions to the Health and Welfare Fund and the Legal Services Fund, the Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, and by these acts has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to

cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to make the contractually required contributions to the Health and Welfare Fund and the Legal Services Fund, with interest and other sums applicable.¹

We shall also order the Respondent to make its employees whole for any losses they may have suffered as a result of the Respondent's failure to make the contractually required benefit fund payments in the manner prescribed in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981). This shall include reimbursing employees for any contributions they themselves may have made, with interest, for the maintenance of any fund after the Respondent ceased making the benefit fund payments. *Concord Metal*, 295 NLRB 912 (1989). Interest on any money due and owing employees shall be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Leonard Concrete Pipe Co., Inc., Hamden, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Connecticut Laborers' Funds a/w Laborers' International Union of North America, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit by failing to make the contractually required contributions to the Health and Welfare Fund and the Legal Services Fund. The appropriate unit is:

All General Laborers, Tack Welders, Special Pipe Fabricators, Overhead Crane Operators, Mixer Operators, Fork Lift Operators, Maintenance Men, Lead Men and Working Foremen employed by the Respondent; but excluding all other employees, and all guards, professional employees and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make the contractually required contributions to the Health and Welfare Fund and the Legal Services Fund, as set forth in the remedy section of this decision.

¹ Because the provisions of employee benefit fund agreements are variable and complex the Board does not provide at the adjudicatory stage of the proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. Any additional amounts owed with respect to the funds will be determined in accordance with the procedure set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

(b) Make whole the unit employees for any losses they may have suffered because of the Respondent's failure to make the contractually required contributions to the Health and Welfare Fund and the Legal Services Fund, as set forth in the remedy section of this decision.

(c) Post at its facility in Hamden, Connecticut, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with the Connecticut Laborers' Funds a/w Laborers' International Union of North America, AFL-CIO as the exclusive representative of the employees in the bargaining unit by failing and refusing to make the contractually required contributions to the Health and Welfare Fund and the Legal Services Fund. The appropriate unit is:

All General Laborers, Tack Welders, Special Pipe Fabricators, Overhead Crane Operators, Mixer Operators, Fork Lift Operators, Maintenance Men, Lead Men and Working Foremen employed by us; but excluding all other employees, and all guards, professional employees and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make the contractually required contributions to the Health and Welfare Fund and the Legal Services Fund.

WE WILL make you whole, with interest, for any losses to you resulting from our failure to make the contractually required contributions to the Health and Welfare Fund and the Legal Services Fund.

LEONARD CONCRETE PIPE CO., INC.